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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,643	01/28/2002	Anthony Nocella III	984	3850

7590 10/22/2003

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Akron, OH 44308

EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,643

Applicant(s)

NOCELLA, ANTHONY

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 14 May 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Part II DETAILED ACTION

This office action is in response to applicant's amendment filed on August 4, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

1. Claim 5 is objected to because of the following informalities: "the handle assembly" lacks a proper antecedent basis. It appears to read "the handle section". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Chou et al. '536.

Chou et al. show and disclose an umbrella comprising: a shaft (2), a retractable head inherently including an umbrella frame (41, 42) being operated together with the shaft to alternately extend, lock, and retract the retractable head relative to the shaft, said shaft (2) having a shaft lower end, a handle section (1) affixed to the shaft lower end, an illumination means including a refractor (5) and a light source such as a lamp (3) affixed to the shaft lower end and the handle section of the shaft, a battery assembly (64) being housed within and at an upper end of the handle section, a screw cap having receiving threads to mate with threads formed along the lower rim of the handle such that to removably contain the batteries, and a switch (63) for on/off the illumination means, wherein the shaft is a transparent, solid, polygonal

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rod with a refracting area for refracting the light source and therefore the whole umbrella body is illuminated.

3. Claims 1-2 and 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by Tatsumi '831.

Tatsumi shows and discloses an umbrella comprising a shaft (2) having a shaft lower end, a retractable head including an umbrella frame inherently including ribs (23), a hub (22), and a runner to be operated together with the shaft to alternately extend, lock, and retracted the retractable head, a handle section (3) affixed to the shaft lower end, illumination means affixed to the handle section for furnishing the rays of light which illuminate the shaft, said handle section having a cavity, said illumination means including a light source which may be a visible ray LED (7) or a bulb (12) and a battery assembly (4 and 5) being housed within the cavity of the handle section, and the shaft being made of hard synthetic resin which could be a light permeable, colored transparent, or milky white tube through the entire shaft (2) or spaced apart members (27) that circumscribing the shaft for transmitting rays of light.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al. '536 or Tatsumi '831 as applied to claim 1 above, and further in view of Murphy '805.

The claim is considered to be met by Chou et al. or Tatsumi as explained and applied in above rejections except that either Chou et al. or Tatsumi do not specifically disclose the illumination means being an incandescent lamp. However, Murphy teaches an umbrella (20) comprising an illumination means including a light source (28) mounted on the shaft (22), wherein the light source (28) would be an incandescent light bulb to provide colored light source for improving the visibility of the user (col. 4, lines 32, 42-48). It would have been an obvious matter of design choice to a person of ordinary skill in the art at the time the invention was made to selectively replace the light source of the umbrella of Chou et al. or Tatsumi with an incandescent lamp because it would have expected applicant's invention to perform equally well with an incandescent lamp as taught by Murphy for improving the visibility of the user.

6. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al. '536 or Tatsumi '831 as applied to claim 1 above, and further in view of Carso et al. (US Patent No. 6,237,615).

The claims are considered to be met by Chou et al. or Tatsumi as explained and applied in above rejections except that either Chou et al. or Tatsumi do not specifically disclose the umbrella comprising a translucent, neon-colored tube circumscribing the shaft of the umbrella as claimed. However, Chou et al. disclose the shaft (2) being formed of a transparent polygonal rod with a plurality of grooves (20) and at least a refracting area (21) circumscribing the shaft for transmitting light source outward. And, Tatsumi teaches the shaft (2) being formed of a hard

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synthetic resin and, at least an area (27) or an entire area between a lower stopper (9) and an upper stopper (10), being formed of light permeable colored transparent member or milky white member for allowing light from the illumination means emitted outward. Further, Carso et al. teach an umbrella (100) comprising a shaft (30) being made of transparent or translucent material to increase the illumination for emitting light source outward when an activated lightstick is inserted into a compartment (32) on the shaft (30). Therefore, it would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the umbrella of Chou et al. or Tatsumi having a translucent, neon-colored tube circumscribing a portion of the shaft of the umbrella as claimed because Applicant has not disclosed that the shaft being formed with a specific material such as translucent, neon-colored tube provides an advantage and is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the shaft of the umbrella of Chou et al. or Tatsumi having either light permeable member such as colored transparent member or milky white member as taught by Chou et al. or Tatsumi or a translucent, neon-colored as claimed as taught by Carso et al. because all light permeable members perform the same function of allowing light source to be emitted outward for improving more visibility of a user.

Response to Arguments

7. In response to applicant's argument that the reference to Tatsumi '831 fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a series of threads formed along a lower rim of the handle and a screw cap) are not recited in the

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rejected claims. These features only recites in a non-rejected claim 6. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

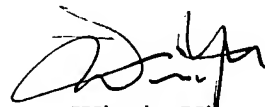
However, upon further consideration, a new ground(s) of rejection is made as set forth above discussion.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Winnie Yip
Patent Examiner
Art Unit 3637

wsy
October 17, 2003